

FILED

FINDINGS OF FACT, CONCLUSIONS OF LAW, RECOMMENDED ORDER AND ORDER

CAUSE NO. A-1764

FINDINGS OF FACT

1. Hobson was formerly a licensed insurance producer. His former registered address with the Department of Insurance was Foundations Financial Group/Mass Mutual, 9300 Underwood Avenue, #300, Omaha, Nebraska 68114. His last known home address was 14005 Manderson Plaza, Apt. 302, Omaha, Nebraska 68164. See E1. Currently, his business address is

Mutual of Omaha 2102 N. 117th Avenue, Omaha, Nebraska 68164, See E2 and E4, and his home address is 5065 Blondo Street, Omaha, Nebraska 68104. See E2.

2. The Department is the agency of the State of Nebraska charged with licensing insurance producers.

3. Hobson has had a previous administrative action taken against him. In A-1740, Hobson was found to have failed to provide a written response to an inquiry by the Nebraska Department of Insurance. Further, he was found to have failed to provide notice to the Department of his change of address within 30 days of its change. He had his insurance producers license revoked on January 14, 2008, for his failure to respond in violation of Neb. Rev. Stat. §44-1525(11) and 44-4059(1)(b), and for violating Neb. Rev. Stat. §44-4054(8) for failing to provide notice of his address change. A review of Exhibit 1 in A-1740 reveals that Hobson never did receive any of the correspondence from the Department's Consumer Affairs Division that was mailed to his business address of record or to his home address as all letters were returned to the Department marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward". However, Hobson did provide a written statement to his former insurer employer on the matter, which the insurer submitted to the Department. See E1. A review of A-1740 does not reveal that the Department ever attempted to contact Hobson further through his former insurer employer or contact the insurer for a current address on Hobson.

4. Hobson's insurance producer license expired on September 30, 2007. See E1. In April 2007, he had left Mass Mutual and taken a position with a mutual fund company that did not require his insurance producer license. He did not update his address at that time, nor did he complete his continuing education requirements. See E2.

5. Hobson took a position with Mutual of Omaha in December 2007 that required him to obtain his insurance producer license again. He contacted the Department at that time regarding the requirements to get his expired insurance producer license reinstated. He was informed that the only requirements he needed were to get his continuing education required hours and pay the reinstatement fee. He was not aware of the pending administrative hearing (A-1740) regarding his expired license. His insurance producer license was reinstated on January 22, 2008, but that was set aside as his license was revoked in A-1740, effective January 14, 2008. See E1, E3, and E4.

6. On or about February 7, 2008, Hobson applied for a new insurance producer license. On the application, he noted under Part III, question B, that he did have a disciplinary action taken against him which resulted in his insurance producer license being revoked on January 14, 2008. Further on the application, he noted under Part III, question C, that he had pled no contest in April 2004 to 1st offense DUI, and pled no contest in October 2004 to 2nd offense DUI, with resulting fine, license suspension and probation. See E2, E5 and E6.

7. On February 11, 2008, Jason McCartney ("McCartney"), Producer Licensing administrator for the Nebraska Department of Insurance, sent Hobson a letter denying his insurance producer license application for his violation of any insurance law, having been convicted of a misdemeanor, and having his insurance producer license revoked. In that letter, Hobson was informed of his right to a hearing on the denial. See E2. The letter was sent certified to Hobson. See E1.

8. On or about February 18, 2008, Hobson requested a hearing. See E3.

9. At the hearing, Hobson testified and that in April 2007 he had left his position with Mass Mutual Financial Group ("Mass Mutual") and took a position with Pacific Select Distributors,

a mutual fund wholesaler. In that employment, he was not required to maintain his insurance producer license and therefore he did not complete his continuing education requirements for such license. Hobson further admitted to negligently failing to update his registered address with the Department at that time. He explained that he was not aware that the Department's Consumer Affairs Division had attempted to contact him about a complaint they had received. He had been contacted by and had submitted a statement to Mass Mutual on his handling of the matter, and having heard nothing further from Mass Mutual (or obviously the Department) he thought it was resolved at least regarding his involvement. He would definitely be willing to submit any further information that the Department would request should the Department require it. He further testified that he was totally unaware of the filing of an administrative action against him for failure to respond to a written inquiry of the Department or failing to provide a current address within 30 days of changing his address. He said he had never received any of the correspondence or filings attempted to have been served on him, and would never purposely avoid or ignore any such correspondence or legal proceeding regarding himself or his license. He realizes that his not receiving such correspondence or filings is due to his own negligence in failing to change his address with the Department. He went on to testify that he pled no contest and thus had been convicted twice in 2004 of DUI, had paid his fines and met his probation requirements. He submitted written documentation detailing his substance abuse evaluation at that time, as well as his completion of a DUI Offenders Program and an alcohol-counseling program. See E7. He has been in Alcoholics Anonymous since that time. He accepts responsibility for his actions that lead to his convictions, but he has been "clean" since then and has not affected his insurance producer activities. The mutual fund company where he had been employed wanted him to transfer to New

Jersey, which he did not want to do, so he has taken a position with Mutual of Omaha as a Training/Recruiting Manager in the Life and Annuities product area for which he is required to have an insurance producer license. He is willing to do whatever it takes for him to become licensed again with our Department.

10. McCartney also testified at the hearing. His testimony provided the foundation for the action that he took based upon the revocation of Hobson's license in A-1740, and his 2004 DUI convictions. He further explained that the Producer Licensing Division had approved the reinstatement of Hobson's license on January 22, 2008, as they were not aware that the expired license of Hobson had been revoked on January 14, 2008, in A-1740. When they received a copy of the Order, they rescinded the license reinstatement.

11. The granting of a license by the Department is based upon the truth and veracity of the facts disclosed in the application, the testimony given and the evidence introduced into the record at the hearing.

12. I find the testimony of Hobson to be credible. While the seriousness of his having his license revoked is not being minimized, both Hobson's testimony, and the evidentiary record in A-1740 point to his not being aware of the Department's efforts to secure his written response to a complaint received, or the filing of an administrative action, A-1740, against him. Further, there was no evidence to support a finding that Hobson purposely intended to avoid responding to the Department or that he received notice of the hearing in the administrative action, A-1740, or chose to ignore attending it. There was no evidence presented of any unlawful acts committed by Hobson other than the DUIs in 2004, nor any evidence of any other complaints against Hobson's actions as a licensed insurance producer since his licensing with our Department in 2002.

CONCLUSIONS OF LAW

1. The Department has broad jurisdiction, control and discretion over the licensing of Hobson to sell insurance in the State of Nebraska pursuant to Neb. Rev. Stat. §44-101.01 and §44-4047 et seq.
2. The Department has personal jurisdiction over Hobson.
3. The Director may deny the issuance of an insurance producer license on the basis of an applicant's previous revocation of an insurance producer license or an applicant's conviction of a misdemeanor pursuant to Neb. Rev. Stat. §44-4059(1).
4. Hobson's previous license revocation or his misdemeanor conviction is a sufficient basis for denial of his insurance producer license application. However, such denial is discretionary, not mandatory.

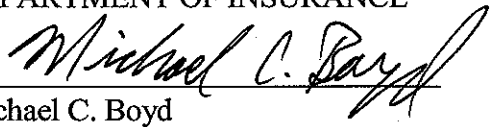
RECOMMENDED ORDER

Based on the Findings of Fact and Conclusions of Law, it is recommended that Hobson's application for his Insurance Producer's License be accepted and his license granted. Further, that Hobson shall fully cooperate with the Department's Consumer Affairs Division inquiry into the Louis R. Forney complaint by providing complete and detailed written responses to any and all requests received from the Department related to its investigation of that complaint, which failure to respond to written inquiries regarding such complaint was the basis of administrative action A-

1740. The Nebraska Department of Insurance will continue to retain jurisdiction over this matter until Hobson has complied with all provisions of this order.

Dated this 19th day of March, 2008.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE



Michael C. Boyd
Hearing Officer

CERTIFICATE OF ADOPTION

I have reviewed the foregoing Findings of Fact, Conclusions of Law, and Recommended Order and hereby certify that the Recommended Order is adopted as the official and final Order of this Department in the matter of the denial of application for license for Nathan Richard Hobson, A-1764.

Dated this 21 day of March 2008.

STATE OF NEBRASKA
DEPARTMENT OF INSURANCE


ANNM FROHMAN
Director of Insurance

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Findings of Fact, Conclusions of Law, Recommended Order, and Order was served upon Nathan Richard Hobson, by mailing a copy to

Nathan Richard Hobson at Mutual of Omaha 2102 N. 117th Avenue, Omaha, Nebraska 68164, by
certified mail, return receipt requested, on this 21 day of March, 2008.

